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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

September 2, 1992

Donna Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

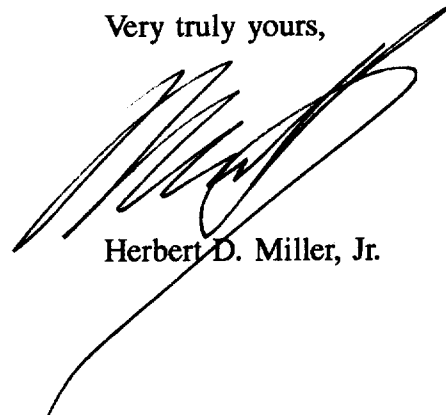
Dear Ms. Searcy:

Transmitted herewith, on behalf of Telephone and Data Systems, Inc. (TDS) is its Opposition to a Supplement to Application for Review filed by Century Cellunet, Inc. and others in connection with File Number 10209-CL-P-715-B-88.

The required microfiche copies are being prepared and will be submitted as soon as they are available.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Herbert D. Miller, Jr.

**ORIGINAL**  
BEFORE THE

**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D. C. 20554

In re Application of

**Telephone and Data Systems, Inc.**

For Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block B to serve the Wisconsin 8 - Vernon Rural Service Area; Market Number 715

File Number  
10209-CL-P-715-B-88

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**SEP - 2 1992**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**OPPOSITION TO SUPPLEMENT  
TO APPLICATION FOR REVIEW**

Telephone and Data Systems, Inc. (TDS) files herewith, by its attorneys, its Opposition to the Supplement to Application for Review submitted by Century Cellunet, Inc. and other wireline applicants in Wisconsin RSA #8 - Vernon ("Petitioning Parties"). Wisconsin RSA #8, Inc., a wholly owned subsidiary of TDS, is the licensee of cellular facility KNKN-459 serving Wisconsin RSA # 8.<sup>1</sup>

The question before the Commission in **this** proceeding is whether TDS had a prohibited cross interest in multiple wireline applications for Wisconsin RSA #8 by virtue of the facts that a) TDS filed an application in its own right there and b) UTELCO, a company in which TDS holds an ownership interest,

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<sup>1</sup> On March 21, 1991, the Commission was notified of the consummation of the *pro forma* assignment of TDS' license to its wholly owned subsidiary, Wisconsin RSA #8, Inc. See File Number 08426-CL-AL-1-91.

filed no application there but was nevertheless admitted to a post-filing, pre-lottery settlement group some (but fewer than all) of the other members of which had filed mutually exclusive applications there. The sole issues here are:

- ▶ Whether, as a matter of law, participation by a non-applicant in a settlement group confers on that non-applicant an "interest" in applications filed by other members of the settlement group such that all of the applications filed by members of the settlement group, as well as the application filed by the party with an ownership interest in the non-applicant-member, violate Section 22.921(b) of the Rules.<sup>2</sup> There are no issues of fact to be determined. The positions of TDS and of Settling Parties on the matter here at issue have been adequately (and repeatedly) ventilated in prior pleadings and need not be restated here.
  
- ▶ Whether an application can properly be dismissed on the basis of a new and novel interpretation of Section 22.921(b), directly opposite to the interpretation placed on that section by the Chief, Mobile Services Division, and directly opposite to prior interpretation.

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<sup>2</sup> The Chief, Mobile Services Division concluded that in those circumstances, there is no violation and no basis for denial of TDS' application. The Deputy Chief, Common Carrier Bureau, concluded that in those circumstances there are as many violations as there are applications, but only technical ones which, in the circumstances here present, do not warrant denial of TDS' application. TDS adheres to the conclusion articulated by the Chief, Mobile Services Division, and has sought Commission review of the position taken by the Deputy Chief, Common Carrier Bureau.

On June 15, 1992, a Commission decision (\_\_\_ FCC Rcd \_\_\_) in an entirely different proceeding was released affirming the *Initial Decision* of Administrative Law Judge Joseph Chachkin in *La Star Cellular Telephone Company* (6 FCC Rcd 6860 (1991)), which had dismissed the application of La Star Cellular Telephone Company (La Star) for a wireline cellular authorization to serve a portion of the New Orleans, Louisiana MSA. The basis for the *La Star* decision was that La Star's forty-nine percent joint venturer, United States Cellular Corporation (USCC), a subsidiary of TDS, had been sufficiently more active than La Star's fifty-one percent joint venturer, SJI, in the prosecution of La Star's cellular application, to place USCC "in control" of La Star. La Star and USCC have, independently, sought judicial review of the Commission's decision on this point, with which they strongly disagree.

More than two months following release of the Commission's *La Star* decision, and more than six months after filing their Application for Review, Settling Parties, on August 18, 1992, filed their present "Supplement," again urging the Commission to set aside the grant of TDS' above captioned application, and to deny it, this time "in light of the Commission's findings and conclusions in the La Star proceeding." (Supplement, pp. 4 - 5), evidently on the theory that those findings and conclusions have something adverse to say about TDS' character qualifications (Supplement, p. 3). They do not.

The Commission's findings and conclusions in the *La Star* proceeding have nothing whatever to do with the present case, and Settling Parties' request should be rejected. First, neither of the following matters is at issue here:

- ▶ TDS' eligibility to file as a wireline applicant; that is not at issue, because TDS' wireline presence is undisputed;
- ▶ UTELCO's eligibility to file as a wireline applicant; that is not at issue, because UTELCO did not file an application;
- ▶ The nature of TDS' relationship with UTELCO; this is also not at issue, because UTELCO did not file an application in its own right. It would not matter whether TDS had a 1.1 percent interest, or a 100 percent interest in UTELCO, or something in between. The violation would have been the same. Beyond the undisputed fact that TDS owns a greater than one percent interest in UTELCO, the nature of that interest simply does not matter.

Second, in *La Star*, the Commission did **not** conclude that USCC **intentionally** assumed control of *La Star*, or that anything had been concealed from the Commission.<sup>3</sup> Third, no issues involving misrepresentation, lack of candor, or

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<sup>3</sup> The USCC witnesses fully acknowledged that they had taken certain  
(continued...)

other matters relating to character were designated or subsequently specified (or even requested) in the *La Star* proceeding, **and no findings or conclusions on any such matters were made or drawn.**<sup>4</sup>

However NOCGSA, which had submitted proposed findings and conclusions to the effect that USCC personnel and others had misrepresented facts and lacked candor in their hearing testimony,<sup>5</sup> filed contingent exceptions to Judge Chachkin's *Initial Decision* arguing that he had erred in failing to adopt those findings and conclusions. The Commission dismissed those exceptions as moot,

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<sup>3</sup>(...continued)

actions on behalf of La Star. They and USCC considered those actions to be ministerial acts or steps taken to support the application, all taken at the request of the controlling party, SJI, acting through La Star's counsel, and none constituting anything like direction or the exercise of control over the affairs of La Star. The Commission interpreted those same actions as evidence of the exercise of control, particularly since it proceeded essentially as though La Star's counsel were counsel for USCC, even though in USCC's view all of the relevant evidence is to the contrary, including the fact that La Star's counsel had served in that capacity for years before USCC acquired its interest in La Star. Since the wireline eligibility of La Star depended on SJI rather than USCC being in control, La Star was found not to have been wireline eligible and its application was dismissed.

<sup>4</sup> Differences of opinion between USCC and the Commission as to the legal consequences of facts which are not substantially in dispute did not create such issues. Nor did differences of opinion between USCC, La Star, and NOCGSA, a mutually exclusive applicant. It is well established that mere differences in factual contentions or legal conclusions do not warrant a conclusion that a licensee or principal has misrepresented facts or lacked candor. *See, e.g., Royce Int'l Broadcasting*, 66 RR 2d 1746 (Rev. Bd. 1989); *Valley Broadcasting Co.*, 66 RR 2d 600 (Rev. Bd. 1989).

<sup>5</sup> USCC demonstrated in *La Star* that the NOCGSA allegations are completely unfounded, see USCC's Reply Findings therein.

in light of its affirmance of the Initial Decision. In short, no findings or conclusions even touching on USCC's character or other licensee qualifications were made or drawn in *La Star*.

Nor did the Commission in *La Star* invite parties to other proceedings to litigate NOCGSA's specious contentions that USCC personnel had lied during their hearing testimony. It said,

"Because our conclusion in this regard results in the dismissal of La Star's application, we do not reach the question raised in NOCGSA's exceptions of whether La Star's principals lacked candor in their hearing testimony concerning the control of La Star. NOCGSA's exceptions and La Star's motion to strike those exceptions will be dismissed as moot. Questions regarding the conduct of SJI and USCC in this case may be revisited **in light of the relevant findings and conclusions here** in future proceedings where the other interests of these parties have decisional significance." (FCC 92-243, n. 3) (emphasis added).

NOCGSA's proposed findings and conclusions on the misrepresentation-lack of candor non-issue, which were never adopted, are not Commission findings and conclusions; neither are the NOCGSA exceptions. The **Commission's** findings and conclusions in *La Star* have nothing whatever to do with misrepresentation, lack of candor, or character generally. The most expansive interpretation that can reasonably be placed on the quoted footnote is that if the Commission's findings and conclusions are accepted, USCC was more active as a minority joint venturer, and SJI was less active as a majority joint venturer, than either should have been, and that this may be considered in a proceeding where USCC's position as a

minority owner a) is comparable to what it was in *La Star* and b) is relevant. Here, there are no factual issues concerning USCC's (or TDS') relationship to UTELCO, a matter which in any event has nothing to do with the issue before the Commission here.

### Conclusion

The nature of TDS' relationship to UTELCO is not here in issue, and no findings or conclusions from the *La Star* proceeding on matters relating to corporate relationships have any relevance to the present proceeding. There were no issues, findings or conclusions in the *La Star* proceeding relating to TDS' character. Therefore, no purpose would be served by grant of Petitioning Parties' request, and it should be denied.

Respectfully submitted,

**Telephone and Data Systems, Inc.**

By /s/ Alan Y. Naftalin  
Alan Y. Naftalin

By /s/ Herbert D. Miller, Jr.  
Herbert D. Miller, Jr.

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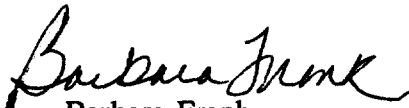
September 2, 1992



# Certificate of Service

I, Barbara Frank, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by First Class United States Mail, postage prepaid:

Kenneth E. Hardman, P.C., Esq.  
Attorney at Law  
1255 - 23d Street, N. W.  
Washington, D. C. 20037

  
/s/ Barbara Frank  
Barbara Frank

September 2, 1992